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IN THE

Supreme Court of the United States

OCTOBER TERM 1960

No. 45

FEDERAL POWER COMMISSION, *Petitioner*,

vs.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., THE CITY OF NEW YORK,

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, *Respondents*.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

~~MOTION TO FILE BRIEF AND~~ BRIEF AMICUS CURIAE ON BEHALF OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF MICHIGAN

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September 20, 1960

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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MOTION FOR LEAVE TO FILE BRIEF FOR THE MICHIGAN PUBLIC SERVICE COMMISSION AS AMICUS CURIAE

Now comes the Michigan Public Service Commission by its attorneys Paul L. Adams, Attorney General of the State of Michigan and Samuel J. Torina, Solicitor General of the State of Michigan, and A. C. Stoddard, Assistant Attorney General, and requests leave to file a brief *amicus curiae* in support of the Federal Power Commission, for the below stated interest of the *amicus curiae*.

INTEREST OF AMICUS CURIAE

The *amicus curiae* is the public utility regulatory body of the State of Michigan charged with the regulation of local natural gas distribution and sale, and the protection of gas consumers within that State.

The Michigan Public Service Commission exercises exclusive jurisdiction over all public utility regulatory matters within Michigan, including regulation of the rates and services of gas utilities furnishing natural or manufactured gas to consumers within the State (Act 3 of 1939, Public Acts of the State of Michigan, Henderson's Michigan Statute Annotated § 22.1, *et seq.*). The Michigan Commission is thus directly and immediately interested in insuring an adequate supply of natural gas at reasonable prices for approximately 1,500,000 gas consumers within the State of Michigan which have made substantial investments in order to utilize this fuel.

The State of Michigan has particular concern in the allocation of natural gas supplies and pipeline capacity as related to the operation of the ten major gas storage fields located within the State.

Almost all natural gas consumed within Michigan is transported from out of State, primarily through four major interstate pipelines, Michigan Wisconsin Pipeline Company, Panhandle Eastern Pipe Line Company, American Louisiana Pipeline Company, and Trunkline Gas Company, which are regulated by the Federal Power Commission. The people of Michigan and its Public Service Commission are vitally interested in effective regulation by the Federal Power Commission of the pipeline companies supplying natural gas to Michigan consumers, since the adequacy

of supply and rate level ultimately paid by those consumers is directly affected by federal regulation, and the State cannot regulate the rates and services of such companies.

The decision of the Court of Appeals, by greatly restricting the Federal Power Commission's jurisdiction over interstate gas transportation services, has greatly weakened the protection provided ultimate gas consumers under the Natural Gas Act.

For these reasons, the Michigan Public Service Commission respectfully requests leave to file the attached brief *amicus curiae*.

Respectfully submitted,

PAUL L. ADAMS,
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SAMUEL J. TORINA,
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BRIEF FOR THE MICHIGAN PUBLIC SERVICE COMMISSION AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

The interest of the *Amicus Curiae* is that stated in its motion to which this Brief is attached.

ARGUMENT

The Decision Below Unduly Restricts the Jurisdiction of the Federal Power Commission Over Interstate Gas Transportation and Should Be Reversed by This Court.

It is, of course, obvious that under the Natural Gas Act (Section 7), the Commission has jurisdiction to approve or disapprove proposed projects for

the transportation or sale of natural gas in interstate commerce. The effect of the decision below is to so restrict the Commission's long-standing and oft-recognized authority under the Act as to preclude it from denying a transportation certificate on the grounds that the proposed service would pre-empt existing pipeline capacity, increase rates paid by existing consumers, and possibly jeopardize the gas supply of existing consumers. The Michigan Commission believes that the Natural Gas Act on its face not only permits, but indeed requires, the Federal Power Commission to consider the possibly adverse effects of any jurisdictional sale or service (including an interstate transportation service) on existing consumers.

This Court has repeatedly emphasized that the whole purpose of the Act is the protection of consumers against unreasonable gas prices, *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591; *Phillips Petroleum Co.* v. *State of Wisconsin*, 347 U.S. 672; *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378; *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission*, 364 U.S. 137, 143, 147. If the Federal Power Commission, however, must certificate any transportation service which meets bare minimum "public utility" requirements, then the Natural Gas Act will have lost its effectiveness in providing the "complete, permanent and effective bond of protection from excessive rates and charges" contemplated by this Court in its CATCO decision (*Atlantic Refining Co., supra*, 360 U.S. at 388).

The Michigan Commission does not intend to suggest that any and all transportation arrangements of the type here proposed are contrary to the public in-

terest or injurious to gas consumers. It does urge that the Federal Power Commission is entitled to appraise any interstate gas transportation or other jurisdictional service in the light of public convenience and necessity, which encompasses the need of consumers in Michigan and elsewhere for an adequate gas supply at reasonable rates.

CONCLUSION

The Michigan Commission, as stated, believes that the Court below has misconstrued the Natural Gas Act by imposing a limitation on the Federal Power Commission's jurisdiction which is neither expressed nor contemplated in the Act. If the decision below stands, the only result will be a reduction in the effectiveness of federal gas regulation, and the ability of the Federal Power Commission to protect local gas consumers. For these reasons, it is submitted that the decision below is in fundamental error, and should be reversed.

Respectfully submitted,

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